

OCT 18 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LARRY BILLINGSLEY, aka Chris
Billingsley, Chris Harper, Larry Bernard
Harper, Larry B. Billingsley and Anthony
Jordan,

Defendant - Appellant.

No. 04-50139

D.C. No. CR-03-00261-WMB-01

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
William Matthew Byrne, Senior District Judge, Presiding

Submitted October 11, 2005^{**}

Before: T.G. NELSON, WARDLAW and TALLMAN, Circuit Judges.

Larry Billingsley appeals the 37-month sentence imposed following his
guilty plea conviction for conspiracy, in violation of 18 U.S.C. § 371, and identity

^{*} This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

theft, in violation of 18 U.S.C. § 1028(b)(1)(D). We have jurisdiction pursuant to 28 U.S.C. § 1291. We vacate the sentence and remand for further proceedings.

Billingsley and the government both contend that the five years of supervised release to which Billingsley was sentenced impermissibly exceeds the statutory maximum of three years for his convictions. The parties are correct. *See* 18 U.S.C. § 3583(b)(2); *United States v. Guzman-Bruno*, 27 F.3d 420, 423 (9th Cir. 1994). Accordingly, we vacate the sentence and remand for the district court to set a term of supervised release within the statutorily-permitted range. *See id.*

Because appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we also remand the sentence to the district court to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 915-16 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional *Booker* error).

VACATED and REMANDED.